

Message Text

LIMITED OFFICIAL USE

PAGE 01 USUN N 01242 01 OF 02 060721Z
ACTION IO-14

INFO OCT-01 ISO-00 AF-10 ARA-10 EA-10 EUR-12 NEA-10
CIAE-00 DODE-00 PM-05 H-01 INR-10 L-03 NSAE-00
NSC-05 PA-01 SP-02 SS-15 ICA-11 EB-08 COME-00
TRSE-00 OMB-01 JUSE-00 FTC-01 SIL-01 LAB-04 /135 W
-----010385 060738Z /11

R 052025Z APR 78
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 0469

LIMITED OFFICIAL USE SECTION 01 OF 02 USUN NEW YORK 01242

E.O. 11652: N/A
TAGS: EGEN, UN, ECOSOC, EINV
SUBJECT: MARCH 31 SESSION OF UN WORKING GROUP ON CODE
OF CONDUCT RELATING TO TRANSNATIONAL CORPORATIONS (TNCS).

REF: (ALL PREVIOUS)

1. SUMMARY: MOST OF FINAL DAY OF MARCH 20-31 SESSION OF INTERGOVERNMENTAL WORKING GROUP (IGWG) ON CODE WAS DEVOTED TO DISCUSSION ON FIRST SECTION OF COMMON ELEMENTS IN SECRETARIAT'S MARCH 25 PAPER (SEE REFTELS) UNDER SECTION III-B, WHICH DEALS WITH ECONOMIC ISSUES. IN LATE AFTER-NOON, BRIEF AND LARGELY NON-SUBSTANTIVE STATEMENTS EMPHASIZING PROGRESS IN IGWG WERE MADE BY A NUMBER OF DELEGATIONS, INCLUDING U.S. CHAIRMAN CONCLUDED SESSION WITH HIGHLY OPTIMISTIC SUMMARY OF PROGRESS AND PREDICTED MORE IN FUTURE SESSIONS. HE READ OFF NON-SUBSTANTIVE REPORT HE WILL PRESENT TO MAY SESSION OF COMMISSION ON TRANSNATIONAL CORPORATIONS, WHICH HE WILL ASK TO EXTEND IGWG'S MANDATE, AND AUTHORIZE THREE MORE TWO-WEEK SESSIONS OF IGWG DURING COMING YEAR. END SUMMARY.

SECTION III-B-1(ECONOMIC, FINANCIAL AND SOCIAL -- OWNER-
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USUN N 01242 01 OF 02 060721Z

SHIP AND CONTROL)

2. DISCUSSION GENERALLY CENTERED ON DEGREE TO WHICH PARAS 61 TO 64 SHOULD LIMIT TNC'S FLEXIBILITY TO MEET OBLIGATIONS SET OUT THEREIN. JAMAICAN DEL, SPEAKING FOR G-77, EXPRESSED GENERAL SATISFACTION WITH "COMMON ELEMENTS" WHILE OFFERING SUGGESTIONS FOR SPECIFIC CHANGES IN

LANGUAGE TO REDUCE TNC DISCRETION. INDIAN AND OTHER LDC DELS SUPPLEMENTED THIS WITH EMPHASIS ON IMPORTANCE OF OWNERSHIP AND CONTROL AS KEY TO SECTION INsofar AS TNC OBSERVANCE OF OTHER OBLIGATIONS DEPENDED TO LARGE EXTENT ON MAXIMIZATION OF LOCAL PARTICIPATION IN TNC DECISION-MAKING PROCESS. U.S. AND OTHER OECD DELS COUNTERED WITH ARGUMENTS THAT IMPORTANT ISSUE WAS EXTENT TO WHICH TNC ACTIVITIES WERE IN ACCORDANCE WITH NATIONAL LAWS AND POLICIES AND ADVISABILITY OF AVOIDING DETAILED PRESCRIPTIONS AS TO HOW THEY SHOULD ORGANIZE THEMSELVES TO MEET SUCH OBLIGATION.

3. ORGANIZATION OF TNC DECISION-MAKING PROCESS (PARA 61): JAMAICAN DEL PROPOSED CHANGING "PERMIT" TO "ENSURE" TO STRENGTHEN OBLIGATION. U.S. DEL POINTED OUT THAT END OF SENTENCE DID NOT NECESSARILY FOLLOW FROM BEGINNING. HE FURTHER INDICATED STRONG PREFERENCE FOR DELETION OF PARA ON GROUNDS THAT THERE WAS NO NEED TO SPECIFY ORGANIZATIONAL STRUCTURE OF TNC, SIMPLE PROVISION FOR OBSERVANCE OF OBLIGATIONS WOULD SUFFICE. HE CONCLUDED THAT IF PARA WERE RETAINED REFERENCE TO STRUCTURE SHOULD BE REMOVED AND REPLACED BY LANGUAGE SIMILAR TO OECD GUIDELINE PROVISIONS RE COOPERATION AMONG ENTITIES OF TNC TO MEET OBLIGATIONS SPECIFIED IN CODE.

4. COOPERATION AMONG ENTITIES OF TNCS (PARA 62).
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USUN N 01242 01 OF 02 060721Z

JAMAICAN DEL RECOMMENDED DELETION OF PHRASE "TO THE MAXIMUM EXTENT" ON GROUNDS COMPLIANCE WITH NATIONAL REQUIREMENTS WAS ABSOLUTE OBLIGATION. U.S. AND OTHER OECD DELS CONTENDED THAT (1) SUGGESTION ACCEPTABLE IF REQUIREMENTS UNDERSTOOD TO BE LEGAL ONES BUT OTHERWISE MODIFIERS WERE NEEDED; AND (2) FLEXIBILITY NEEDED TO COVER CASES WHERE TNC SUBJECT TO CONFLICTING REQUIREMENTS OF GOVERNMENTS.

5. FACILITATION OF LOCAL EQUITY PARTICIPATION (PARA 63):
GENERAL ACCEPTANCE OF JAMAICAN PROPOSAL FOR REF TO COMPLIANCE WITH LOCAL LAWS.

6. EXERCISE OF CONTROL BY LOCAL PARTNERS (PARA 64):
G-77 SUPPORTED SECRETARIAT FORMULATION. U.S. DEL CONTENDED SAME ARGUMENTS MADE RE PARA 61 APPLIED TO THIRD, I.E., THAT GENERAL STANDARDS SHOULD SUFFICE AND SPECIFIC PROVISIONS RE PARTICULAR PATTERNS OF CONTROL WERE UNNECESSARY.

7. PARTICIPATION OF HOST COUNTRY NATIONALS IN DECISION-MAKING OF SUBSIDIARIES (PARA 65) AND MANAGERIAL TRAINING

AND EMPLOYMENT OF NATIONALS (PARA 66): FEW COMMENTS ON THESE PARAS. G-77 PROPOSED DELETION OF "QUALIFIED" IN PARA 65 ON GROUNDS IT COULD BE USED TO DISCRIMINATE AGAINST HOST NATIONALS. U.S. DEL WHILE SUPPORTING PRINCIPLES INVOLVED COUNSELED, AS RE PRECEDING PARAS, AGAINST RIGID STANDARDS. ACCORDINGLY, URGED INCLUSION OF MODIFIERS IN BOTH.

8. BALANCE OF PAYMENTS (III-B-2): IN SHORT TIME REMAINING, GROUP TOOK UP BP SECTION, RECOGNIZING THAT FULL DISCUSSION NECESSARY AT NEXT SESSION OF IGWG. INDIAN DEL LED OFF FOR G-77 WITH COMMENTS ON SPECIFIC PARTS OF COMMON ELEMENTS, PRIMARILY DIRECTED TOWARD REMOVING REFS TO "SOUND COMMERCIAL PRACTICE" AND NECESSITY FOR LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 USUN N 01242 01 OF 02 060721Z

TAKING INTO ACCOUNT INTERESTS OF HOME COUNTRIES. REMAINING COMMENTS WERE MAINLY IN FORM OF GENERAL REMARKS BY OECD DELS. U.S. DEL EMPHASIZED FOLLOWING POINTS: 1) ABSOLUTE NECESSITY OF RETAINING FLEXIBILITY OF ACTION AFFORDED BY "SOUND COMMERCIAL PRACTICE" CONCEPT; 2) NEED TO TAKE INTO ACCOUNT HOME COUNTRY INTERESTS; 3) LINKS WITH

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 USUN N 01242 02 OF 02 060725Z
ACTION IO-14

INFO OCT-01 ISO-00 AF-10 ARA-10 EA-10 EUR-12 NEA-10
CIAE-00 DODE-00 PM-05 H-01 INR-10 L-03 NSAE-00
NSC-05 PA-01 SP-02 SS-15 ICA-11 EB-08 COME-00
TRSE-00 OMB-01 JUSE-00 FTC-01 SIL-01 LAB-04 /135 W
-----010521 060737Z /10

R 052025Z APR 78
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 0470

LIMITED OFFICIAL USE SECTION 02 OF 02 USUN NEW YORK 01242

SECTION IV; 4) ADVISIBILITY OF ENSURING THAT RESTRICTIONS ON TNC ACTIVITIES BASED ON BP CONSIDERATION NOT OVERRIDE

OTHER REQUIREMENTS, I.E., LONG-TERM GROWTH AND DEVELOPMENT GOALS AND 5) INCORPORATION OF NON-DISCRIMINATION PRINCIPLE IN CODE AS A CONDITION OF ACCEPTING PARAS ON THIS SUBJECT. VARIOUS POINTS SUPPORTED BY OTHER OECD DELS WHO STRONGLY ATTACKED INDIAN EFFORT TO ELIMINATE ELEMENTS OF FLEXIBILITY IN BP SECTION.

9. CONCLUDING STATEMENTS: TOWARDS THE END OF THE SESSION ON MARCH 31, CHAIRMAN ALLOCATED SOME TIME FOR CONCLUDING REMARKS, MAINLY BECAUSE SOVIETS HAD UNSUCCESSFULLY BEEN PRESSURING FOR PRESS COVERAGE OF SESSION, AND IT HAD BEEN ARRANGED FOR UN PRESS OFFICE TO COVER FINAL SESSION. EARLIER IN THE DAY, CHAIRMAN HAD PRIVATELY URGED SEVERAL DELEGATIONS NOT TO INTRODUCE SUBSTANTIVE ISSUES OR TO MAKE AGGRESSIVE STATEMENTS. THUS, THE FORMAL STATEMENTS WERE GENERALLY LOW KEY AND LARGELY PERFUNCTORY. JAMAICA DEL ON BEHALF OF G-77 STRESSED PROGRESS TO DATE AND THAT HE COULD SEE A FINAL DOCUMENT "EMERGING." HE EMPHASIZED IMPORTANCE OF TNC CODE AND ITS HIGH PRIORITY IN THE CONTEXT OF THE NEW INTERNATIONAL ECONOMIC ORDER. HE INDICATED THAT NEXT SESSION WOULD BE "ACTION-ORIENTED" LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USUN N 01242 02 OF 02 060725Z

AND THAT THE G-77 DELS WOULD BE PREPARED TO DRAFT A FINAL OR ALMOST FINAL CODE. U.S. DEL STATED THAT USG FIRMLY COMMITTED TO ELABORATION OF CODE AND THAT IF CONSENSUS COULD BE REACHED ON A CODE IT WOULD REPRESENT MAJOR ACHIEVEMENT IN ENCOURAGING CONTRIBUTIONS BY TNCS TO THE DEVELOPMENT PROCESS AND ELIMINATING POTENTIAL CONFLICTS, NOTING ECONOMIC INTERDEPENDENCE. HE STRESSED PROGRESS TO DATE AND DESCRIBED SECRETARIAT PAPER AS A "USEFUL" BASIS ON WHICH TO CONTINUE. INDIA DEL MADE MODERATE STATEMENT STATING COMMITMENT TO CODE AND ITS UTILITY FOR "ALL PARTIES CONCERNED," PRESUMABLY TNCS AND GOVERNMENTS.

10. E. GERMAN DEL (ON BEHALF OF USSR AS WELL) STATED THAT SECRETARIAT PAPER DID NOT REFLECT THE VIEWS OF ALL GROUPS AND, THEREFORE, IT HAD BEEN NECESSARY TO INTRODUCE CONFERENCE PAPER NO. 3, WHICH STATED EAST BLOC VIEWS. HE SAID SECTION III WAS THE CORE OF THE CODE AND EMPHASIZED IMPORTANCE OF TWO ISSUES WHICH HAD NOT BEEN FULLY DISCUSSED, NAMELY, SOUTHERN AFRICA AND THE SECTION ON EMPLOYMENT AND LABOR. ON SECTION IV, HE COULD NOT AGREE WITH MANY OF THE "COMMON ELEMENTS" AND STATED THAT NOTHING IN SECTION IV COULD CONTRADICT PRINCIPLES CONTAINED IN SECTION III AND THAT WE COULD NOT FORMULATE "RIGHTS" OF TNCS VIS-A-VIS STATES. NONETHELESS, HE LEFT CLEAR IMPLICATION THAT HE WAS NOT PROPOSING ELIMINATION OF SECTION IV. W. GERMAN DEL (SPEAKING FOR EC) MADE

RELATIVELY STRONG STATEMENT, EMPHASIZING DECLINE OF PRIVATE FOREIGN INVESTMENT IN DEVELOPING COUNTRIES (WHICH IT WAS GROUP'S JOB TO REVERSE), THAT THE CODE MUST BE "BALANCED", AND THAT SECTIONS III AND IV WERE BOTH ESSENTIAL TO FUTURE WORK.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USUN N 01242 02 OF 02 060725Z

11. FUTURE WORK OF WORKING GROUP: CHAIRMAN'S CONCLUDING REMARKS WERE MOST INTERESTING OF CONCLUDING SESSION. AFTER DESCRIBING HIS PROPOSED REPORT TO THE COMMISSION IN MAY, WHICH AVOIDED SUBSTANCE, HE SAID THAT ON BEHALF OF THE IGWG HE WOULD RECOMMEND AN EXTENSION OF THE GROUP'S MANDATE. HE WOULD ALSO RECOMMEND THAT THE IGWG SHOULD HAVE 3 SESSIONS OF 2 WEEKS EACH BEFORE THE NEXT COMMISSION IN MAY OF 1979, AND THAT THE FIRST OF THESE 3 SESSIONS SHOULD TAKE PLACE BEFORE THE MEETING THIS AUTUMN OF THE GENERAL ASSEMBLY. WITH RESPECT TO THE NEXT SESSION OF THE IGWG, HE SUGGESTED THE FOLLOWING PRELIMINARY SCHEDULE FOR DISCUSSION: 1) COMPLETION OF THE SECRETARIAT PAPER (WHICH HE ESTIMATED WOULD TAKE A "SUBSTANTIAL" PART OF THE FIRST WEEK); 2) SUBJECTS BEING DISCUSSED IN OTHER FORA, E.G., CORRUPT PRACTICES, 3) EMPLOYMENT AND LABOR AND THE ILO DECLARATION, 4) THE SOUTHERN AFRICA ISSUE, 5) A PRELIMINARY EXCHANGE OF VIEWS ON THE DEFINITION OF TNCS, AND 6) POSSIBLY A PRELIMINARY DISCUSSION OF THE LEGAL CHARACTER OF THE CODE, BUT PROBABLY NOT THE ISSUE OF IMPLEMENTATION. THERE WERE NO OBJECTIONS TO THESE SUGGESTIONS.

12. THE JAMAICAN DEL (ON BEHALF OF G-77) SUGGESTED THAT THE SECRETARIAT REDRAFT THE PREAMBLE IN THE SAME FORM AS WORKING PAPER NO. 1, E.G., INDICATE COMMON ELEMENTS, ETC. HE INDICATED THAT G-77 HAS MAJOR PROBLEMS WITH PRESENT DRAFT. AFTER SOME DISCUSSION, INDIAN DEL SUGGESTED THAT CHAIRMAN DO A NEW DRAFT AND CHAIRMAN ACCEPTED WITH UNDERSTANDING THAT HE WOULD DECIDE ON THE TIMING OF ITS PRESENTATION. LEONARD

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STANDARDS, MEETING REPORTS, MULTINATIONAL CORPORATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 05 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978USUNN01242
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780148-0549
Format: TEL
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780488/aaaacwtx.tel
Line Count: 266
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 11a35cb5-c288-dd11-92da-001cc4696bcc
Office: ACTION IO
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3060833
Secure: OPEN
Status: NATIVE
Subject: MARCH 31 SESSION OF UN WORKING GROUP ON CODE OF CONDUCT RELATING TO TRANSNATIONAL CORPORATIONS (TNCS).
TAGS: EGEN, EINV, XX, UN, ECOSOC
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/11a35cb5-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014